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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Robert L. Miller, Jr,

No. CV-22-02172-PHX-JJT

10 Plaintiff,

**ORDER**

11 v.

12 Ascenda USA Incorporated, *et al.*,

13 Defendants.  
14

15 At issue is Defendants Marc Lloyd, Greg Fettes, and IntouchCX, Inc.’s Motion to  
16 Dismiss (Doc. 84, Mot.), to which *pro se* Plaintiff Robert L. Miller filed a Response  
17 (Doc. 88, Resp.) and Defendants filed a Reply (Doc. 89, Reply). The Court finds it  
18 appropriate to resolve the Motion without oral argument. LRCiv 7.2(f).

19 **I. BACKGROUND**

20 In the Third Amended Complaint (Doc. 68, TAC), the operative pleading, Plaintiff  
21 alleges that he is a Black man with disabilities of “depression, anxiety, and related illnesses  
22 including chronic back and digestive system illness.” (TAC at 4–5.) He names as  
23 Defendants Canada-based 24/7 InTouch<sup>1</sup>, Marc Lloyd (“SVP, IntouchCX Global Human  
24 Resources”) and Greg Fettes (“Founder”) (collectively here, “Canadian Defendants”), as  
25 well as IntouchCX US, Inc. (TAC at 2–3.)

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27 <sup>1</sup> 24/7 InTouch is a d/b/a of IntouchCX, and Plaintiff identified it with an Arizona  
28 address in the TAC. Plaintiff did not specify IntouchCX, Inc.—a Canadian corporation—  
as a Defendant in the TAC, but service was executed on IntouchCX, Inc. based on the  
naming of 24/7 InTouch as Defendant, and IntouchCX, Inc. has joined in the present  
Motion to Dismiss.

1 Plaintiff claims that the Canadian Defendants and IntouchCX US discriminated  
 2 against him in employment in violation of Title VII, 42 U.S.C. § 2000e *et seq.*; the  
 3 Americans with Disabilities Act, 42 U.S.C. § 12112 *et seq.* (“ADA”); Section 1981 of the  
 4 Civil Rights Act, 42 U.S.C. § 1981; and the Arizona Civil Rights Act, A.R.S. § 41-1463  
 5 (“ACRA”). (TAC at 1–4.) He filed a Charge of Discrimination with the Equal Employment  
 6 Opportunity Commission (“EEOC”) dated December 23, 2020, and the EEOC issued a  
 7 Right to Sue letter on September 29, 2022. (TAC at 5; Mot. Ex. B, EEOC Charge.)

8 Previously, the Court entered an Order (Doc. 90) granting in part and denying in  
 9 part a Motion to Dismiss (Doc. 70) filed by IntouchCX US, finding Plaintiff stated claims  
 10 against this Defendant for disability discrimination under the ADA and ACRA, and for  
 11 racial discrimination under § 1981.<sup>2</sup> In so doing, the Court construed Plaintiff’s many  
 12 allegations in the TAC against a single, unspecified party Plaintiff calls “Defendant”—  
 13 even though there are four Defendants—as allegations against his employer, IntouchCX  
 14 US, Inc., which is located in Arizona, where Plaintiff worked. (*E.g.*, TAC ¶ 1 (“[Plaintiff]  
 15 was employed by *Defendant* as a Tier 2 (supv) Agent and as a Tier 1 (Floor) Agent.”  
 16 (emphasis added)).)

17 The Canadian Defendants now move to dismiss the claims against them under  
 18 Federal Rule of Civil Procedure 12(b)(2), for lack of personal jurisdiction, and Rule  
 19 12(b)(6), for failure to state a claim. Application of Rule 12(b)(2) resolves the Canadian  
 20 Defendants’ Motion.

## 21 **II. LEGAL STANDARD**

22 For a federal court to adjudicate a matter, it must have jurisdiction over the parties.  
 23 *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982).  
 24 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears  
 25 the burden of demonstrating that the court has jurisdiction.” *In re W. States Wholesale Nat.*  
 26 *Gas Antitrust Litig.*, 715 F.3d 716, 741 (9th Cir. 2013). “Because there is no statutory

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 28 <sup>2</sup> The Court found that Plaintiff did not state claims in the TAC for defamation, breach of contract, discrimination under the Age Discrimination in Employment Act, or under any other legal theory. (Doc. 90 at 2 n.2.)

1 method for resolving [personal jurisdiction], the mode of its determination is left to the trial  
2 court.” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

3 “When a district court acts on a defendant’s motion to dismiss under Rule 12(b)(2)  
4 without holding an evidentiary hearing, the plaintiff need only make a prima facie showing  
5 of jurisdictional facts to withstand the motion to dismiss.” *Ballard v. Savage*, 65 F.3d 1495,  
6 1498 (9th Cir. 1995). The facts alleged in the complaint are generally accepted as true  
7 unless controverted; the court “may not assume the truth of allegations in a pleading which  
8 are contradicted by affidavit.” *Data Disc.*, 557 F.2d at 1284. “[C]onflicts between the facts  
9 contained in the parties’ affidavits must be resolved in [the plaintiff’s] favor.” *Rio Props.,*  
10 *Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citation omitted).

11 To establish personal jurisdiction over a nonresident defendant, the plaintiff must  
12 show that the forum state’s long-arm statute confers jurisdiction over the defendant and  
13 that the exercise of jurisdiction comports with constitutional principles of due process. *Id.*;  
14 *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995). Arizona’s  
15 long-arm statute allows the exercise of personal jurisdiction to the same extent as the  
16 United States Constitution. *See* Ariz. R. Civ. Proc. 4.2(a); *Cybersell v. Cybersell*, 130 F.3d  
17 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1358 (Ariz. 1995)  
18 (stating that under Rule 4.2(a), “Arizona will exert personal jurisdiction over a nonresident  
19 litigant to the maximum extent allowed by the federal constitution”). Thus, a court in  
20 Arizona may exercise personal jurisdiction over a nonresident defendant so long as doing  
21 so accords with constitutional principles of due process. *Cybersell*, 130 F.3d at 416.

22 Due process requires that a non-resident, non-consenting defendant have sufficient  
23 minimum contacts with the forum state so that “maintenance of the suit does not offend  
24 ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326  
25 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see also*  
26 *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028, 2039 (2023) (reaffirming that personal  
27 jurisdiction exists where a defendant has consented to suit). Courts recognize two forms of  
28 contacts-based personal jurisdiction within the confines of due process: “(1) ‘general

jurisdiction’ which arises when a defendant’s contacts with the forum state are so pervasive as to justify the exercise of jurisdiction over the defendant in all matters; and (2) ‘specific jurisdiction’ which arises out of the defendant’s contacts with the forum state giving rise to the subject litigation.” *Birder v. Jockey’s Guild, Inc.*, 444 F. Supp. 2d 1005, 1008 (C.D. Cal. 2006). “Each defendant’s contacts with the forum State must be assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984).

### III. ANALYSIS

#### A. General Jurisdiction

Plaintiff’s allegations are insufficient to demonstrate the Court has general jurisdiction over the Canadian Defendants. “[T]he place of incorporation and principal place of business are paradigm bases for general jurisdiction” over a corporation. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Under *International Shoe*, general or all-purpose jurisdiction over a corporation arises in “instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities.” *Id.* at 138 (quoting *Int’l Shoe Co.*, 326 U.S. at 318) (internal quotations omitted). It is not sufficient that a corporation simply “engages in a substantial, continuous, and systematic course of business” in the forum state; instead, general jurisdiction over a corporation exists only when the corporation’s “affiliations with the State are so continuous and systematic as to render them essentially at home in the forum state.” *Id.* at 127, 137–38 (internal quotations and citations omitted). Thus, “the general jurisdiction inquiry does not focus solely on the magnitude of the defendant’s in-state contacts,” but rather “calls for an appraisal of a corporation’s activities in their entirety.” *Id.* at 139 n.20. Ultimately, “a corporation that operates in many places can scarcely be deemed at home in all of them.” *Id.*

The Certificates of Service on IntouchCX and its employees, Messrs. Lloyd and Fettes (Docs. 80–82), as well as the Canadian Defendants’ Motion (*e.g.*, Mot. at 7), all show IntouchCX is incorporated in Winnipeg, Manitoba. Plaintiff has alleged no facts and provided no evidence that IntouchCX has its principal place of business in Arizona. Indeed,

1 Plaintiff alleges he worked for what appears to be the American subsidiary, IntouchCX  
 2 US, in Arizona—the subject of the Court’s prior Order (Doc. 90). The only evidence  
 3 Plaintiff does provide to resist the Canadian Defendants’ Motion consists of screen shots  
 4 of webpages showing *IntouchCX US* is incorporated in *Colorado*, not Arizona—  
 5 information that is wholly irrelevant to the question whether the Canadian company,  
 6 *IntouchCX*, is at home in *Arizona*, as required for the Court to find it has general personal  
 7 jurisdiction over IntouchCX. (*See* Resp. Exs. 1–3.)

8 Even if IntouchCX is the parent company of IntouchCX US, such a structure,  
 9 without more, would not lead to a finding of personal jurisdiction over IntouchCX in  
 10 Arizona. *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520–21 (9th Cir. 1989) (noting that a  
 11 nonresident corporate defendant may be subject to personal jurisdiction by way of its  
 12 subsidiary corporation’s contacts on a showing that parent and subsidiary are not really  
 13 separate entities); *Patterson v. Home Depot, USA, Inc.*, 684 F. Supp. 2d 1170, 1177–78 (D.  
 14 Ariz. 2010) (stating that, under Arizona law, corporate form is not lightly disregarded and,  
 15 to “pierce the corporate veil or demonstrate alter-ego status,” plaintiff must show “unity of  
 16 control” and that the “observance of the corporate form would sanction a fraud or promote  
 17 injustice” (internal quotations and citations omitted)). No allegations or evidence before  
 18 the Court even begin to show the unity of control required to impute the actions of  
 19 IntouchCX US on IntouchCX for the purposes of personal jurisdiction. For these reasons,  
 20 Plaintiff has not met his burden to show that the Court has general jurisdiction over the  
 21 Canadian Defendants.

## 22 **B. Specific Jurisdiction**

23 Likewise, Plaintiff has not sufficiently alleged or provided evidence that the Court  
 24 has specific jurisdiction over the Canadian Defendants. Whether a court may exercise  
 25 specific jurisdiction in a given case turns on the extent of the defendant’s contact with the  
 26 forum and the degree to which the plaintiff’s suit is related to the defendant’s contacts.  
 27 *Yahoo! Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, 433 F.3d 1199, 1210 (9th  
 28 Cir. 2006). The Ninth Circuit uses the following approach to determine whether a court

1 may exercise specific jurisdiction over a nonresident defendant: (1) the nonresident  
2 defendant must do some act in or consummate some transaction with the forum, or perform  
3 some act by which it purposefully avails itself of the privilege of conducting activities in  
4 the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be  
5 one which arises out of or results from the defendant's forum-related activities; and (3) the  
6 exercise of jurisdiction must be reasonable. *Data Disc*, 557 F.2d at 1287.

7 The plaintiff bears the burden of establishing the first two requirements of the test.  
8 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the  
9 plaintiff establishes the first two requirements, the burden shifts to the defendant to  
10 establish that the third requirement is not met. *Mavrix Photo, Inc. v. Brand Techs., Inc.*,  
11 647 F.3d 1218, 1228 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,  
12 476–78 (1985)). All three requirements must be met for the exercise of jurisdiction to  
13 comport with constitutional principles of due process. *Omeluk*, 52 F.3d at 270.

14 To meet the first element—that the defendant purposefully directed activities at the  
15 forum state—the plaintiff must show the defendant “either (1) ‘purposefully availed’  
16 himself of the privilege of conducting activities in the forum, or (2) ‘purposefully directed’  
17 his activities towards the forum.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th  
18 Cir. 2006) (quoting *Schwarzenegger*, 374 F.3d at 802). To determine whether the  
19 defendant's actions constitute purposeful direction, courts apply the “effects” test that was  
20 developed in *Calder*, 465 U.S. at 789–90. The effects test requires that “the defendant  
21 allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum  
22 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”  
23 *Yahoo!*, 433 F.3d at 1206. “The proper question is not where the plaintiff experienced a  
24 particular injury or effect but whether the defendant's conduct connects [it] to the forum in  
25 a meaningful way.” *Walden v. Fiore*, 571 U.S. 277, 290 (2014). In other words, the  
26 relationship between the defendant, the forum state, and the litigation “must arise out of  
27 contacts that the defendant *himself* creates with the forum State” and not just “the  
28 defendant's contacts with persons who reside there.” *Id.* at 284.



1 To begin with, the TAC includes no non-conclusory allegations as to any intentional  
 2 actions IntouchCX or Mr. Fettes took that were aimed at Arizona, let alone that Plaintiff's  
 3 discrimination claims arose from those actions. The Court thus does not have personal  
 4 jurisdiction over IntouchCX or Mr. Fettes.

5 With regard to Mr. Lloyd, Plaintiff alleges Mr. Lloyd visited Arizona two times,  
 6 once on September 21, 2019, for the purpose of "inform[ing] agents that the 'Instacart'  
 7 campaign would sunset soon," and once on December 9, 2019, for the purpose of "learning  
 8 more about how the Netflix campaign launch was coming along." (TAC ¶¶ 30, 32, 46.)  
 9 While Plaintiff alleges that, during these visits, he told Mr. Lloyd he suffered from a hostile  
 10 work environment in Arizona, no allegations demonstrate Mr. Lloyd engaged in  
 11 discriminatory conduct aimed at Plaintiff.<sup>3</sup> In its prior Order, the Court recognized only  
 12 that Plaintiff sufficiently alleged facts supporting a hostile work environment claim against  
 13 his employer, IntouchCX US, including that it made "phantom complaints" against him,  
 14 "controvert[ed] his insurance claim," and terminated him for a pretextual reason. (Doc. 90  
 15 at 5–6.) No such allegations against the Canadian Defendants exist in the TAC, nor does it  
 16 contain allegations that the Canadian Defendants controlled Plaintiff's employer in  
 17 Arizona, IntouchCX US, to the degree required. For these reasons, Plaintiff has failed to  
 18 demonstrate that the Court has general or specific jurisdiction over the Canadian  
 19 Defendants, which was his burden, and the Court must dismiss Plaintiff's claims against  
 20 them.

21 **IT IS THEREFORE ORDERED** granting the Canadian Defendants Marc Lloyd,  
 22 Greg Fettes, and IntouchCX, Inc.'s Motion to Dismiss (Doc. 84) and dismissing Plaintiff's  
 23 claims against these Defendants for lack of personal jurisdiction.

24  
 25 <sup>3</sup> Plaintiff's allegation that Mr. Lloyd (while in Winnipeg) did not respond "for  
 26 several days" to Plaintiff's July 6, 2019 email alleging a hostile work environment at his  
 27 workplace in Arizona, (*see* TAC ¶ 26), does not form the basis of a discrimination claim  
 28 against Mr. Lloyd as a matter of law. *See, e.g., Nat'l R.R. Passenger Corp. v. Morgan*, 536  
 U.S. 101, 122 (2002) (noting a "hostile work environment claim is composed of a series of  
 separate acts that collectively constitute one 'unlawful employment practice'"). Indeed, if  
 the Court had personal jurisdiction over the Canadian Defendants, the Court would dismiss  
 all of Plaintiff's claims against the Canadian Defendants in the TAC for failure to state a  
 claim under Rule 12(b)(6).

Dated this 18th day of October, 2024.

Honorable John J. Tuchi  
United States District Judge